

Appeals court upholds convictions of Maurice Clemmons' getaway driver

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Dorcus Allen addresses the court prior to his sentencing in Judge Frederick Fleming's Courtroom at the County-City Building in downtown Tacoma, Wash., June 17, 2011.(Janet Jensen/Staff photographer) JANET JENSEN

A divided state Court of Appeals panel has upheld the convictions of Dorcus Allen, the getaway driver in one of Pierce County's most notorious crimes.

In a 2-1 decision, the Division II panel rejected Allen's arguments that he deserves a new trial in the deaths of four Lakewood police officers shot by Maurice Clemmons at a Parkland coffee shop more than four years ago.

Allen, who drove Clemmons to and from the scene of the massacre, was the only person to stand trial for murder in the deaths of Sgt. Mark Renninger and officers Tina Griswold, Gregory Richards and Ronald Owens.

Clemmons was killed by a Seattle police officer during a desperate manhunt in the days following the killings.

A Pierce County jury convicted Allen of four counts of premeditated first-degree murder in June 2012, and now-retired Superior Court Judge Frederick Fleming sentenced him to 420 years in prison.

Allen appealed, arguing among other things that there was not enough evidence to convict him, that prosecutors prejudiced his right to a fair trial by misstating the law and that Fleming improperly handed down an exceptional sentence.

In an opinion released Tuesday, Justices Joel Penoyar and James Verellen affirmed Allen's convictions and sentence.

One of Allen's chief arguments on appeal, and one he made at trial and reiterated at sentencing, is that he didn't know what Clemmons intended to do the morning of Nov. 29, 2009.

Penoyar and Verellen rejected that contention.

"Allen knew that Clemmons was threatening to shoot police officers, and Allen fled the scene and hid after the shooting," Penoyar wrote for the majority. "Because of this and other significant incriminating testimony, there is sufficient evidence to prove that Allen knew he was assisting Clemmons."

Another of Allen's chief arguments is that deputy prosecutors misstated the law during their closing arguments at his trial, lessening their burden and prejudicing his right to a fair trial.

In order to prove Allen was an accomplice to Clemmons' acts, prosecutors had to prove he had direct knowledge that Clemmons intended to kill Renninger, Griswold, Richards and Owens.

During closing arguments, prosecutors stated a number of times that Allen "should have known" what Clemmons intended to do. Defense attorneys objected, but Fleming over-ruled their objections and referred jurors to the jury instructions.

Those instructions included a definition of what "knowing" is, including "a person knows or acts knowingly or with knowledge with respect to a fact or circumstance when he or she is aware of that fact or circumstance."

Penoyar and Verellen agreed that prosecutors misstated the law during closing arguments, but they decided it did not violate Allen's right to a fair trial.

“Because the trial court’s instructions correctly stated the law regarding knowledge, any improper argument by the prosecutors was not prejudicial,” Penoyar wrote.

What’s more, Allen’s trial attorneys did not ask Fleming to add a “curative instruction” to refute the prosecutors’ misstatements of the law, the majority ruled.

“Not acting on this opportunity to rectify the error, Allen agreed to the trial court’s proposal of simply referring the jury back to the legally correct instructions already given,” Penoyar wrote.

Justice Bradley Maxa dissented.

Maxa said the prosecution’s repeated misstatement of the law during closing arguments did violate Allen’s rights.

“I conclude that the misstatements were repeated so often and were so significant in the context of the trial evidence that there was a substantial likelihood that the jury’s verdict was affected,” he wrote. “Therefore, I would reverse and remand for a new trial.”

Pierce County Prosecutor Mark Lindquist praised the majority decision.

“While there is pain in the memory of the four fallen officers, we take satisfaction in justice, which was done here,” Lindquist said. “The individuals who assisted Clemmons were held accountable. Defendant Allen, as an accomplice and getaway driver, was by far the most culpable, and he is therefore serving the greatest sentence.”

Seven people in all were charged with crimes in the wake of the massacre.

Six, including Allen, were convicted, but appeals courts threw out the convictions against two of those people and reduced the sentences for two others.

The seventh was acquitted at trial.

Read more here: <http://www.thenewstribune.com/2014/01/14/2993573/appeals-court-upholds-convictions.html#storylink=cpy>